

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,374

IN THE MATTER OF:

Served February 2, 2015

Formal Complaint of METROPOLITAN	)	Case No. FC-2013-01
WASHINGTON COUNCIL, AFL-CIO, et	)	
al., Against WASHINGTON SHUTTLE,	)	
INC., WMATC No. 369, and EXECUCAR,	)	
and EXPRESS	)	

This matter is before the Commission on the amended complaint of the Metropolitan Washington Council of the AFL-CIO, and certain individuals, against Washington Shuttle, Inc., trading as ExecuCar and as Express (respondent). Respondent holds WMATC Certificate of Authority No. 369. The amended complaint alleges that respondent operated without proper authority, charged improper fares, and violated Commission regulations governing vehicle markings and advertising.

**I. BACKGROUND**

The Washington Metropolitan Area Transit Commission (Commission or WMATC) licenses and regulates private-sector, for-hire motor carriers transporting passengers between points in the Washington Metropolitan Area Transit District (Metropolitan District) pursuant to the Washington Metropolitan Area Transit Regulation Compact (Compact).<sup>1</sup>

Article XIII, Section 1(a), of the Compact stipulates that: "A person may file a written complaint with the Commission regarding anything done or omitted by a person in violation of a provision of this Act, or in violation of a requirement established under it." "If the respondent does not satisfy the complaint and the facts suggest that there are reasonable grounds for an investigation, the Commission shall investigate the matter."<sup>2</sup> "If the Commission determines that a complaint does not state facts which warrant action, the Commission may dismiss the complaint without hearing."<sup>3</sup>

After reviewing the allegations and weighing the evidence in the record, including certain passenger affidavits, the Commission issued WMATC Order No. 14,872 on June 20, 2014, dismissing the complaint<sup>4</sup> with respect to all alleged violations except two:

---

<sup>1</sup> Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

<sup>2</sup> Compact, tit. II, art. XIII, § 1(b)(i).

<sup>3</sup> Compact, tit. II, art. XIII, § 1(b)(ii).

<sup>4</sup> As amended November 20, 2013.

violations of the Commission's tariff rules and violations of the Commission's advertising rules. This matter is before the Commission at this time on respondent's response to, and partial failure to respond to, Order No. 14,872.

## **II. TARIFF VIOLATIONS**

WMATC Regulation No. 55-02 in pertinent part prohibits a WMATC carrier from "demand[ing], receiv[ing], or collect[ing]" passenger fares not calculated in accordance with a tariff on file with WMATC. In Order No. 14,872, we preliminarily found that respondent violated Rule 55-02 on three occasions and gave respondent 30 days to request an oral hearing. The order further provided that in the event no hearing was requested, respondent would have 45 days to show cause why the Commission should not assess a \$250 civil forfeiture and/or suspend or revoke WMATC Certificate No. 369.<sup>5</sup> Respondent has not requested an oral hearing, but respondent has filed a response.

Respondent contends that its failure to collect the rates and fares published in its tariff should not be sanctioned because the passengers were undercharged, not overcharged. A plain reading of the Compact, however, does not support respondent's position. Under Article XI, Section 14(c), of the Compact: "A carrier may not charge a rate or fare for transportation subject to [the Compact] other than the applicable rate or fare specified in a tariff filed by the carrier under [the Compact] and in effect at the time." As this Commission has previously observed:

Charging fares calculated at some other rate ultimately may lead to undue discrimination and preferential treatment. In the absence of strict enforcement of the filed rate:

[p]ast experience shows that billing clerks and other agents of carriers might easily become experts in the making of errors and mistakes in the quotation of rates to favored [customers], while other [customers], less fortunate in their relations with carriers and whose [business] is less important, would be compelled to pay the higher published rates.<sup>6</sup>

Respondent further argues that undercharging passengers should not be sanctioned if the customer is "short on cash." There is no evidence in the record to support the proposition that any of respondent's undercharged passengers failed to pay the appropriate fare due to insufficient funds.

---

<sup>5</sup> The requirement to show cause was further conditioned on complainant filing the originals of certain passenger affidavits supporting the complaint. Complainant submitted the originals on July 1, 2014.

<sup>6</sup> *O. Oluokun, Inc., t/a Montgomery County Limo*, No. MP-93-43, Order No. 4225 (Dec. 16, 1993) (quoting from *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 110 S. Ct. 2759, 2766-67 (1990)).

Finally, respondent asserts that the undercharges were not knowing and willful in that there was no corporate policy to undercharge. "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.<sup>7</sup> In any event, respondent admits that it condones its drivers' knowing collection of misquoted fares to avoid confronting passengers with demands for the required amount. Whether that constitutes "policy" or not, it is not acceptable under the Compact for the reasons just explained.

### **III. ADVERTISING VIOLATIONS**

WMATC Regulation No. 63-04 in pertinent part prohibits a WMATC carrier from advertising "rates, fares, [and] charges" not specified in a tariff on file with WMATC. In Order No. 14,872, we found that respondent's ExecuCar rates advertised on the internet did not agree with respondent's ExecuCar rates on file with WMATC. Order No. 14,872 accordingly gave respondent 45 days to align its advertised fares with its fares on file with WMATC or show cause why the Commission should not assess a \$250 civil forfeiture and/or suspend or revoke WMATC Certificate No. 369. Respondent has submitted no response on this issue and has not remedied the violation.

For example, as of the date of this order, with respect to ExecuCar service between Dulles Airport and Zip Code area 20745, respondent's General Tariff No. GT-10 contains a single fare of \$129. Respondent's internet fare for such service is \$112.48 in hybrid sedans and \$139 otherwise.<sup>8</sup>

### **IV. ASSESSMENT OF FORFEITURES AND ORDER TO CEASE AND DESIST**

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>9</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>10</sup> The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.<sup>11</sup>

---

<sup>7</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 244, 58 S. Ct. 533, 535 (1938).

<sup>8</sup> See [www.Execucar.com](http://www.Execucar.com).

<sup>9</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>10</sup> *In re Veolia Transp. On Demand, Inc., & Washington Shuttle, Inc., t/a SuperShuttle*, No. AP-07-006, Order No. 11,580 at 6 (Sept. 18, 2008).

<sup>11</sup> *Id.* at 6.

Based on our finding in Order No. 14,872 that respondent failed to charge the lawful rate on three occasions, we hereby assess a forfeiture of \$250 for knowing and willful violation of Article XI, Section 14, of the Compact and Regulation No. 55-02.<sup>12</sup>

Because respondent's advertised fares and fares on file with WMATC still do not agree with each other, as was required by Order No. 14,872, we hereby assess a forfeiture of \$250 for knowing and willful violation of Regulation No. 63-04.<sup>13</sup> Respondent shall immediately cease advertising ExecuCar rates and fares not on file with WMATC.<sup>14</sup>

Certificate No. 369 shall be subject to suspension and revocation in the event that either the above forfeitures are not timely paid or the aforesaid violations persist.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$500 for knowingly and willfully violating Article XI, Section 14, of the Compact and Regulation Nos. 55-02 and 63-04.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of five hundred dollars (\$500).

3. That respondent shall immediately cease advertising ExecuCar rates and fares not on file with WMATC.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director

---

<sup>12</sup> See *In re Special People Transp., LLC*, No. MP-06-103, Order No. 10,683 (Aug. 8, 2007) (assessing \$250 forfeiture for violating art. XI, § 14, of the Compact).

<sup>13</sup> See *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 6911 at 2-3, 5 (Nov. 18, 2002) (assessing \$250 forfeiture for failing to cease advertising unlawful rates on website).

<sup>14</sup> See *In re Better Business Connection, Inc., t/a BBC Express*, No. MP-13-028, Order No. 14,594 at 13, 15 (Feb. 26, 2014) (directing WMATC carrier to cease internet advertising in violation of Regulation No. 63-04).